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11
12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA

14 HEATHER ROWELL, NO. 09 CV 1770 JM (RBB)
15 Plaintiff, ANSWER OF LAW OFFICES
16 v. OF ROBERT B. SERIAN TO
17 LAW OFFICES OF ROBERT B. SERIAN, SECOND AMENDED COMPLAINT
18 Defendants.
19

20
21 Defendant LAW OFFICES OF ROBERT B. SERIAN answers the
22 complaint on file herein as follows:

23
24 INTRODUCTION

25
26 1. In answering Paragraph 1 of the Complaint, Defendant
27 admits that Plaintiff brought this lawsuit against the Law
28 Offices of Robert B. Serian. Except as herein admitted, the

1 || remaining allegations of Paragraph 1 are denied.

2 2. In answering Paragraph 2 of the Complaint, defendant is
3 without sufficient knowledge or information to form a belief as
4 to the truth of the allegations contained in said paragraph, and
5 on that basis denies each and every allegation contained therein.

6 3. In answering Paragraph 3 of the Complaint, to the extent
7 that said paragraph alleges there were violations, defendant
8 denies said allegations. With respect to the remaining
9 allegations in Paragraph 3 of the complaint, defendant is
10 without sufficient knowledge or information to form a belief as
11 to the truth of the allegations contained in said paragraph, and
12 on that basis denies each and every allegation contained therein.

13 4. In answering Paragraph 4 of the Complaint, Defendant
14 admits that Plaintiff makes certain allegations, but denies the
15 truth of said allegations. Except as herein admitted, the
16 remaining allegations of Paragraph 4 are denied.

JURISDICTION AND VENUE

19 5. In answering Paragraph 5 of the Complaint, defendant is
20 without sufficient knowledge or information to form a belief as
21 to the truth of the allegations contained in said paragraph, and
22 on that basis denies each and every allegation contained therein.

23 6. In answering Paragraph 6, defendant denies that it
24 violated the Fair Debt Collection Practices Act. 15 U.S.C. §§

1 1692 et seq. ("FDCPA") and the Rosenthal Fair Debt Collection
2 Practices Act, California Civil Code §§ 1788-1788.32 ("RFDCPA").

3 7. In answering Paragraph 7, defendant admits that it does
4 business within the State of California. Except as herein
5 admitted, defendant is without sufficient knowledge or
6 information to form a belief as to the truth of the allegations
7 contained in said paragraph, and on that basis denies each and
8 every allegation contained therein.

9 8. In answering Paragraph 8 of the Complaint, defendant is
10 without sufficient knowledge or information to form a belief as
11 to the truth of the allegations contained in said paragraph, and
12 on that basis denies each and every allegation contained therein.

THE PARTIES

15 9. In answering Paragraph 9, defendant admits that
16 plaintiff is a natural person. Except as herein admitted,
17 defendant is without sufficient knowledge or information to form
18 a belief as to the truth of the allegations contained in said
19 paragraph, and on that basis denies each and every allegation
20 contained therein.

21 10. Defendant admits the allegations contained in Paragraph
22 10.

23 11. In answering Paragraph 11 of the Complaint, defendant is
24 without sufficient knowledge or information to form a belief as

1 to the truth of the allegations contained in said paragraph, and
2 on that basis denies each and every allegation contained therein.

3 12. In answering Paragraph 12 of the complaint, defendant is
4 informed and believes said allegations are true and based on said
5 information and belief admits said allegations.

6 13. In answering Paragraph 13, defendant lacks sufficient
7 knowledge to form a belief as to whether Plaintiff's financial
8 obligation was incurred primarily for personal, family or
9 household purposes and therefore can neither admit nor deny
10 whether Plaintiff qualifies as a "consumer" as defined by 15
11 U.S.C. § 1692a(3) or as a "debtor" as defined by Cal. Civ. Code §
12 1788.2(h) and on that basis, denies the allegations. Except as
13 herein admitted, the remaining allegations of Paragraph 3 are
14 denied.

15 14. Defendant admits the allegations contained in Paragraph
16 14.

17 15. In answering Paragraph 15, defendant admits that
18 plaintiff is a natural person. Except as herein admitted,
19 defendant lacks sufficient knowledge to form a belief as to
20 whether Plaintiff's financial obligation was incurred primarily
21 for personal, family or household purposes and therefore can
22 neither admit nor deny whether Plaintiff qualifies as a
23 "consumer" as defined by 15 U.S.C. § 1692a(3) or as a "debtor" as
24 defined by Cal. Civ. Code § 1788.2(h) and on that basis, denies

1 the allegations. Except as herein admitted, the remaining
2 allegations of Paragraph 3 are denied.

3 16. Defendant denies the allegations contained in Paragraph
4 16.

5 17. Defendant admits the allegations contained in Paragraph
6 17.

FACTUAL ALLEGATIONS

9 18. In answering Paragraph 18 of the Complaint, defendant is
10 without sufficient knowledge or information to form a belief as
11 to the truth of the allegations contained in said paragraph, and
12 on that basis denies each and every allegation contained therein.

13 19. Defendant admits the allegations contained in Paragraph
14 19.

15 20. In answering Paragraph 20 of the Complaint, the
16 allegations are vague and ambiguous and defendant is without
17 sufficient knowledge or information to form a belief as to the
18 truth of the allegations contained in said paragraph, and on that
19 basis denies each and every allegation contained therein.

20 21. In answering Paragraph 21 of the Complaint, defendant
21 lacks sufficient knowledge to form a belief as to whether
22 Plaintiff's financial obligation was incurred primarily for
23 personal, family or household purposes and therefore can neither
24 admit nor deny whether it qualifies as a "debt" as defined by 15

1 U.S.C. § 1692a(5) or as a "consumer debt" as defined by Cal. Civ.
2 Code § 1788.2(f).

3 22. In answering Paragraph 22 of the Complaint, defendant
4 lacks sufficient knowledge to form a belief as to whether
5 Plaintiff's financial obligation was incurred primarily for
6 personal, family or household purposes and therefore can neither
7 admit nor deny whether it qualifies as a "debt" as defined by 15
8 U.S.C. § 1692a(5) or as a "consumer debt" as defined by Cal. Civ.
9 Code § 1788.2(f).

10 23. In answering Paragraph 23 of the Complaint, the
11 allegations are vague and ambiguous and defendant is without
12 sufficient knowledge or information to form a belief as to the
13 truth of the allegations contained in said paragraph, and on that
14 basis denies each and every allegation contained therein.

15 24. In answering Paragraph 24 of the Complaint, Defendant
16 admits that it was assigned to collect a specific debt allegedly
17 owed by plaintiff. Except as herein admitted, the remaining
18 allegations of Paragraph 24 are denied.

19 25. Defendant admits the allegations contained in Paragraph
20 25.

21 26. Defendant denies the allegations contained in Paragraph
22 26.

23 27. In answering Paragraph 27 of the Complaint, Defendant
24 admits that it contacted Plaintiff in an attempt to collect a

1 specific financial obligation at issue within one year preceding
2 the filing of the Complaint. Except as herein admitted, the
3 remaining allegations of Paragraph 27 are denied.

4 28. In answering Paragraph 28 of the Complaint, Defendant
5 admits that it contacted Plaintiff in an attempt to collect the
6 financial obligation at issue. Except as herein admitted, the
7 remaining allegations of Paragraph 28 are denied.

8 27. In answering Paragraph 27 of the Complaint, Defendant
9 admits that it contacted Plaintiff in an attempt to collect the
10 financial obligation at issue. Except as herein admitted, the
11 remaining allegations of Paragraph 27 are denied.

12 28. Defendant denies the allegations contained in Paragraph
13 28.

14 29. In answering Paragraph 29 of the Complaint, Defendant
15 admits that it contacted Plaintiff on several occasions in an
16 attempt to collect the financial obligation at issue. Except as
17 herein admitted, the remaining allegations of Paragraph 29 are
18 denied.

19 30. Defendant denies the allegations contained in Paragraph
20 30.

21 31. In answering Paragraph 31 of the Complaint, Defendant
22 admits that it contacted Plaintiff on several occasions in an
23 attempt to collect the financial obligation at issue. Except as
24 herein admitted, the remaining allegations of Paragraph 31 are

denied.

32. Defendant denies the allegations contained in Paragraph

33. Defendant denies the allegations contained in Paragraph

34. Defendant denies the allegations contained in Paragraph

35. Defendant denies the allegations contained in Paragraph

36. Defendant denies the allegations contained in Paragraph

37. Defendant denies the allegations contained in Paragraph

38. Defendant denies the allegations contained in Paragraph

39. In answering Paragraph 39 of the Complaint, Defendant states that it spoke with an administrative assistant by posing patient. As to the remaining allegations in said Paragraph, Defendant lacks sufficient knowledge to form a belief as to the persons alleged and therefore can neither admit nor deny.

40. Defendant denies the allegations contained in Paragraph

41. In answering Paragraph 41 of the Complaint, Defendant
es that it made incessant phone calls to Plaintiff's place of

1 employment. As to the remaining allegations in said Paragraph,
2 defendant lacks sufficient knowledge to form a belief as to the
3 matters alleged and therefore can neither admit nor deny.

4 42. Defendant denies the allegations contained in Paragraph
5 42.

6 43. Defendant denies the allegations contained in Paragraph
7 43.

8 44. Defendant denies the allegations contained in Paragraph
9 44.

10 45. Defendant denies the allegations contained in Paragraph
11 45.

12 46. Defendant denies the allegations contained in Paragraph
13 46.

14 47. Defendant admits the allegations contained in Paragraph
15 47.

16 48. In answering Paragraph 48 of the Complaint, Defendant
17 admits that it requested a dismissal of the state action. Except
18 as herein admitted, the remaining allegations of Paragraph 48 are
19 denied.

20 49. Defendant denies the allegations contained in Paragraph
21 49.

22 50. Defendant denies the allegations contained in Paragraph
23 50.

24 51. Defendant denies the allegations contained in Paragraph
25

1 44.

2 COUNT I

3 52. Answering Paragraph 52 of the Complaint, defendant
4 incorporates herein by reference, as if set forth in full,
5 defendant's answers to Paragraphs 1 through 51, inclusive as set
6 forth above.

7 53. Defendant denies the allegations contained in Paragraph
8 53.

9 54. Defendant denies the allegations contained in Paragraph
10 54.

11 COUNT II

12 55. Answering Paragraph 55 of the Complaint, defendant
13 incorporates herein by reference, as if set forth in full, their
14 answers to Paragraphs 1 through 54, inclusive as set forth above.

15 56. Defendant denies the allegations contained in Paragraph
16 56.

17 57. Defendant denies the allegations contained in Paragraph
18 57.

19 COUNT III

20 58. Answering Paragraph 58 of the Complaint, defendant
21 incorporates herein by reference, as if set forth in full, their
22 answers to Paragraphs 1 through 57, inclusive as set forth above.

1 59. Defendant denies the allegations contained in Paragraph
2 59.

3 60. Defendant denies the allegations contained in Paragraph
4 60.

5 61. Defendant denies the allegations contained in Paragraph
6 61.

7

8 COUNT IV

9 62. Answering Paragraph 62 of the Complaint, defendant
10 incorporates herein by reference, as if set forth in full, their
11 answers to Paragraphs 1 through 61, inclusive as set forth above.

12 63. Defendant denies the allegations contained in Paragraph
13 63.

14 64. Defendant denies the allegations contained in Paragraph
15 64.

16 65. Defendant denies the allegations contained in Paragraph
17 65.

18 66. Defendant denies the allegations contained in Paragraph
19 66.

20

21 COUNT V

22 67. Answering Paragraph 67 of the Complaint, defendant
23 incorporates herein by reference, as if set forth in full, their
24 answers to Paragraphs 1 through 66, inclusive as set forth above.

68. Defendant denies the allegations contained in Paragraph

68.

69. Defendant denies the allegations contained in Paragraph

69.

70. Defendant denies the allegations contained in Paragraph

70.

71. Defendant denies the allegations contained in Paragraph

71

72. Defendant denies the allegations contained in Paragraph

72

COUNT VI

73. Answering Paragraph 73 of the Complaint, defendant incorporates herein by reference, as if set forth in full, their answers to Paragraphs 1 through 72, inclusive as set forth above.

74. Defendant denies the allegations contained in Paragraph
74.

75. Defendant denies the allegations contained in Paragraph

76. Defendant denies the allegations contained in Paragraph

COUNT VII

77. Answering Paragraph 77 of the Complaint, defendant

1 incorporates herein by reference, as if set forth in full, their
2 answers to Paragraphs 1 through 76, inclusive as set forth above.

3 78. Defendant denies the allegations contained in Paragraph
4 78.

5

6 AFFIRMATIVE DEFENSES

7 **FIRST AFFIRMATIVE DEFENSE**

8 **(Failure to State a Claim)**

9 The allegations of the Complaint fail to state a claim
10 against Defendant upon which relief can be granted.

11

12 **SECOND AFFIRMATIVE DEFENSE**

13 **(Statute of Limitations/Laches)**

14 The purported claims set forth in the Complaint are barred
15 in whole or in part by the applicable statutes of limitation
16 and/or the equitable doctrine of laches.

17

18 **THIRD AFFIRMATIVE DEFENSE**

19 **(Bona Fide Error)**

20 To the extent that any violation of law occurred, which
21 Defendant expressly denies, said violation was not intentional
22 and resulted from a bona fide error notwithstanding the
23 maintenance by Defendant of procedures reasonably adapted to
24 avoid any such error.

25

26 13

1 **FOURTH AFFIRMATIVE DEFENSE**
2 **(Unclean Hands)**

3 The allegations in the Complaint and relief requested are on
4 information and belief barred in whole or in part by the doctrine
5 of unclean hands.

6
7 **FIFTH AFFIRMATIVE DEFENSE**
8 **(No Wilful Conduct)**

9 Defendant acted in good faith at all times in its dealings
10 with Plaintiff, and if any conduct by Defendant is found to be
11 unlawful, which Defendant expressly denies, such conduct was not
12 willful and should not give rise to liability.

13
14 **SIXTH AFFIRMATIVE DEFENSE**
15 **(Failure to Mitigate)**

16 Plaintiff, although under a legal obligation to do so, has
17 failed to take reasonable steps to mitigate any alleged damages
18 that she may have and is therefore barred from recovering
19 damages, if any, from Defendant.

20
21 **SEVENTH AFFIRMATIVE DEFENSE**
22 **(Waiver)**

23 Plaintiff has waived her rights, if any, to recover the
24 relief she seeks in the Complaint based upon her own conduct and

1 admissions with respect to the financial obligation at issue.

2

3 **EIGHTH AFFIRMATIVE DEFENSE**

4

5 **(Good Faith)**

6 Plaintiff, acted in good faith in an effort to comply fully with
7 all relevant federal and state laws.

8

9 **NINTH AFFIRMATIVE DEFENSE**

10

11 **(Apportionment)**

12 Without admitting that any damages exist, if damages were
13 suffered by Plaintiff as alleged in the Complaint, those damages
14 were proximately caused by and contributed by persons other than
15 Defendant. The liability, if any exists, of Defendant and/or any
16 responsible parties, named or unnamed, should be apportioned
17 according to their relative degrees of fault, and the liability
of Defendant should be reduced accordingly.

18

19 **TENTH AFFIRMATIVE DEFENSE**

20

21 **(Supervening Cause)**

22 The causes of action in the Complaint are barred, in whole
23 or in part, to the extent that any injury or loss sustained was
24 caused by intervening or supervening events over which Defendant
had or has no control.

25

27

1 **ELEVENTH AFFIRMATIVE DEFENSE**

2 **(Equitable Indemnity)**

3 To the extent that Plaintiff has suffered any damage as a
4 result of any alleged act or omission of Defendant, which
5 Defendant denies, Defendant is entitled to equitable indemnity
6 according to comparative fault from other persons and/or entities
7 causing or contributing to such damages, if any.

8

9 **TWELFTH AFFIRMATIVE DEFENSE**

10 **(Litigation Privilege)**

11 The actions of Defendant complained of in the Complaint
12 constitute communications that were made in good faith and in
13 anticipation of or in connection with ongoing litigation and
14 Plaintiff's claims are therefore barred, in whole or in
15 part, by the California litigation privilege and/or the *Noerr-*
16 *Pennington Doctrine*.

17

18 **THIRTEENTH AFFIRMATIVE DEFENSE**

19 **(Not a Debt Collector)**

20 Defendant, a law firm, is not a "debt collector" as defined
21 by the California Rosenthal Fair Debt Collection Practices Act,
22 Cal. Civ. Code § 1788 et seq.

1 **FOURTEENTH AFFIRMATIVE DEFENSE**

2 **(First Amendment)**

3 Defendant's conduct is protected under the First Amendment
4 of the United States Constitution and the California
5 Constitution. Plaintiffs' proposed interpretation of provisions
6 of the FDCPA must be rejected as it would place an unreasonable
7 restraint upon Defendant's First Amendment rights, thereby
8 raising serious constitutional issues.

9

10 **FIFTEENTH AFFIRMATIVE DEFENSE**

11 **(No Punitive Damages)**

12 Any award of punitive damages as sought by plaintiff would
13 violate the due process and excessive fine clauses of the Fifth,
14 Eighth and Fourteenth Amendments of the United States
15 Constitution, as well as the Constitution of the State of
16 California.

17

18 **SIXTEENTH AFFIRMATIVE DEFENSE**

19 **(Minimal Intrusion)**

20 The alleged intrusion into plaintiff's privacy was minimal.

21

22 **SEVENTEENTH AFFIRMATIVE DEFENSE**

23 **(No Authorization or Ratification)**

24 The defendant did not authorize, direct or ratify the

1 | alleged acts of the other defendants.

EIGHTEENTH AFFIRMATIVE DEFENSE

(No Nexus, Injury Not Foreseeable)

5 No nexus exists between the employment or other relationship
6 between this answering defendant, any other defendant, and the
7 activity which resulted in the alleged injury that was not
8 foreseeable.

NINETEENTH AFFIRMATIVE DEFENSE

(Outside Course and Scope)

12 The other defendants were not acting within the scope of an
13 employment or other relationship with this answering defendant
14 for respondeat superior purposes.

TWENTIETH AFFIRMATIVE DEFENSE

(No Ratification)

Defendant is not responsible for punitive damages because it
neither directed nor ratified the acts of any other defendant.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure,
Plaintiff hereby requests a jury trial.

1 WHEREFORE, Defendant requests judgment as follows:

2 1. That Plaintiff take nothing by the Complaint, which
3 should be dismissed with prejudice.

4 2. That Defendant recover from Plaintiff costs according to
5 proof.

6 3. That Defendant recover attorneys' fees according to
7 proof.

8 4. That the Court orders such other further reasonable
9 relief as the Court may deem just and proper.

10 Dated: April 17, 2010



STEVE NEIMAND
Attorney for Defendant

1 CERTIFICATION [FRCP Rule 11(b)]

2 I hereby certify that this Answer:

3 1. Is not being presented for an improper purpose, such as
4 to harass or cause unnecessary delay or needless increase in the
cost of litigation;

5 2. Is warranted by existing law or by non-frivolous argument
6 for extension or modification or reversal of existing law; and

7 3. Has evidentiary support for all factual contentions or
denials.

8 Dated: April 17, 2010

9 
10 STEVE NEIMAND
11 Attorney for Defendant

1 PROOF OF SERVICE

2 I, the undersigned say: I am over the age of 18 years and not a party to the within action or
3 proceeding. My business address is 24009 Ventura Boulevard, Suite 245, Calabasas, California.

4 On April 17, 2010, I served the within:

5 ANSWER TO SECOND AMENDED COMPLAINT

6 on the persons indicated below, by placing a true copy thereof enclosed in a sealed envelope with
7 postage thereon fully prepaid in the United States mail at Calabasas, California, addressed as
follows:

8 Alison C. Admiral, Esq.
9 Joshua B. Swigart, Esq.
Hyde & Swigart
10 411 Camino Del Rio South
Suite 301
San Diego, CA 92108-3551

11 and by faxing a copy to: (619) 297-1022

12 I am readily familiar with the firm's practice of collection and processing of correspondence for
mailing. Under that practice it would be deposited with U.S. Postal Service on that same day
13 with postage thereon fully prepaid at Calabasas, California in the ordinary course of business. I
am aware that on motion of the party served, service is presumed invalid if postal cancellation
14 date or postage meter date is more than one day after date of deposit for mailing in affidavit.

15 I am employed in the office of a member of the bar of this Court at whose direction the service
was made.

16 I declare under penalty of perjury that the foregoing is true and correct. Executed on April 17,
17 2010 at Calabasas, California.

18 
19 _____
KERRY ROSE